

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 442 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PREFULCHANDRA & CO.,

Versus

UNION OF INDIA

Appearance:

MR SURESH M SHAH for Petitioner

None for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 10/11/97

ORAL JUDGEMENT

Heard. The petitioner herein is the original plaintiff and the respondents are the original defendants No.1 & 2. They will be described accordingly in this Judgment.

2. Plaintiff filed Regular Civil Suit No. 559 of 1975 in the Court of learned Civil Judge (J.D.) at

Jamnagar for recovery of Rs.2221.65 ps. being the amount of damages caused to the goods in question being 161 bags of Bajra stated to have been purchased by the plaintiff from defendant No.2 as per Bill dated 27.12.1974. The said goods were booked under R.R. No. 220656 along with Invoice No. 18 dated 16.12.1974 from Mukatsar to Jamnagar. According to the plaintiff 151 bags were found in the wagon and delivery thereof was taken by the plaintiff whereas there was short delivery to the extent of 10 bags of Bajra. The case of the plaintiff was that as a result of gross negligence, default, misconduct, connivance and the complicity of defendants the short delivery had resulted. After serving notice under Section 78(B) of the Indian Railways Act read with Section 80 of the Code of Civil Procedure to the first defendant the plaintiff filed the aforesaid Suit. The plaintiff also served the notice to defendant No.2 but the claim was not settled and therefore the Suit claim was also directed against defendant No.2.

3. Defendant No.2 was duly served with the summons, but he remained absent before the Court and therefore the learned trial Judge passed ex-parte order against defendant No.2 on 26.6.1971 while the Suit proceeded against the defendant No.1 Union of India according to whom, as per the Written Statement Exh.9, the plaintiff did not have any cause of action to file Suit against defendant No.1, the consignment in question was loaded by defendant No.2 and it was not supervised by the Railway staff, required packing condition P/7 was also not complied with by the consignor and sender's weight was accepted only for the purpose of charging freight and was not binding to the first defendant. Accordingly receipt was given to the consignor under the endorsement "said to contain Receipt" bearing remarks "One wagon said to contain 161 bags bajra." Even the conditions and provisions with regard to packing and sewing as contained in P/7 were not complied with. The consignment in question was loaded by the consignor in M.G. covered wagon No.SR/23243 which reached destination on 7.1.1975 directly from the packing station and without being interfered with enroute and with booking station seals and rivets intact. Hence according to the case of defendant No.1 it might be the case of short loading of the goods by the consignor for which the first defendant could not be held liable. The plaintiff was informed by the defendant No.1 vide letter dated 31.4.1975 inter-alia stating therein the aforesaid true facts. The Suit was accordingly sought to be dismissed in so far as it was directed against first defendant.

4. The learned trial Judge, being the Civil Judge (J.D.), Court No.3, Jamnagar, after framing issues and recording the evidence dismissed the Suit against the first defendant as per Judgment and order dated 25.1.1983. The matter was carried in Appeal by the present petitioner before the learned Extra Assistant Judge, Jamnagar in Regular Civil Appeal No. 104/83. The learned Appellate Judge by his Judgment and order dated 29.1.1988 dismissed the plaintiff's Appeal with costs. That is how the present petitioner has been before this Court by virtue of this Revision Application under Section 115 of the Code of Civil Procedure.

5. I have heard Mr.S.M.Shah, learned Advocate appearing for the petitioner. He has taken me through the evidence adduced before the trial Court. I have also gone through the Judgment rendered by the Courts below. Apart from the fact that the petitioner has been facing concurrent findings of fact I do not find any jurisdictional error having been committed by the Courts below. In that view of the matter no indulgence can be shown in this petition. Hence, following order is passed:

This petition is dismissed. Rule is discharged with no order as to costs.

* * * * *

sas